

**Dental Board
of California**

Second Report of the Enforcement Monitor

Current Status of the Enforcement Program

February 14, 2003

NewPoint Group[®]
Management Consultants

February 14, 2003

Ms. Kathleen Hamilton, Director
California Department of Consumer Affairs
400 R Street, Suite 3000
Sacramento, California 95814

Dear Ms. Hamilton,

This report provides a summary of recommendations contained in the Monitor's Initial Report on the Dental Board's Enforcement Program dated August 23, 2002. Additionally, this report includes information regarding the current status and impacts of the Board's efforts to implement recommendations contained in the Monitor's Initial Report.

The Monitor is pleased to report that there has been a significant improvement in Enforcement Program performance since completion of the Monitor's initial assessment. Substantial progress has been made implementing many of the recommendations contained in the Monitor's Initial Report. Additionally, the number of complaint closures has increased and there are significantly fewer pending complaints. These improvements have occurred primarily as a result of the combined efforts of the Board's Chief of Enforcement (Ms. Lynn Thornton), Tustin Office Enforcement Supervisor (Ms. Terri Lane), and all of the Board's investigators, dental consultants, inspectors, consumer assistance technicians, and support staff.

Since release of the Initial Report, the Monitor has met several times with Mr. Michael Pinkerton, the Board's Vice President and Chair of the Board's Legislative and Enforcement Committees. Results of these meetings have been very constructive in terms of surfacing and addressing various issues that need to be acted on by the Board. The Board's Interim Executive Officer (Ms. Gladys Mitchell) also has cooperated with the Enforcement Monitor since her appointment.

Finally, I would like to take this opportunity to recognize the efforts made by Department of Consumer Affairs staff who have promptly responded to various requests for information and assistance. This includes the Department's Contract Manager for this project (Ms. Terri Ciau) and other Department staff involved in providing fiscal, human resources, legal, and legislative support services.

If you have any questions, please call me in our Sacramento office at (916) 442-0469.

Very truly yours,

NewPoint Group®



Benjamin M. Frank
Director

SECOND REPORT OF THE ENFORCEMENT MONITOR

CURRENT STATUS

On August 23, 2002, the Dental Board Enforcement Monitor issued the first report required by S.B. 26 (Figueroa). The report contained nearly 40 specific recommendations. Subsequently, a supplemental report was issued on November 13, 2002. The supplemental report provided a summary of recommendations contained in the Initial Report along with information concerning the status and impacts of the Board's related implementation efforts.

This report provides updated information concerning the status of the Dental Board's Enforcement Program. It also summarizes the status of the Board's efforts related to implementing each of the recommendations contained in the Monitor's Initial Report. The report is organized as follows:

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A. Summary

The Dental Board has significantly improved its Enforcement Program operations. This improvement is largely attributable to the combined efforts of the Board's Chief of Enforcement (Ms. Lynn Thornton), Tustin Office Enforcement Supervisor (Ms. Terri Lane), and Enforcement Program staff in the Sacramento and Tustin Offices. Notwithstanding turnover of staff and increased numbers of vacant positions, during the first half of FY2002/03, Enforcement Program staff closed 21 percent more complaints than were closed during a comparable 6-month period during FY2001/02. Also, from July 1 through December 31, 2002, the total number of pending complaints decreased by 31 percent. Finally, during the first half of FY2002/03, 87 cases were referred to the Attorney General's Office (AGO) for disciplinary action and 24 cases were referred to local District Attorney (DA) offices for criminal action, a portion of which may have been dual referrals. This compares to a total of 118 cases referred to the AGO and 22 cases referred to DAs during all of FY2001/02.

To date, the Dental Board has not received approval of any of the requests that it has submitted for exemptions from the statewide hiring freeze that was imposed on October 23, 2001. To the contrary, in response to control language included in the FY2002/03 Budget Act, the Department of Finance recently eliminated two of the

Board's vacant investigator positions along with a vacant clerical support position. The Department of Finance also reduced the Dental Board's FY2002/03 budget by \$125,000 to reflect the permanent elimination of these three positions.

Additionally, since the start of the current fiscal year, the Dental Board's staffing resource capabilities have diminished further due to separations, transfers, retirements, and extended leaves of absence. At the beginning of the fiscal year, the Dental Board had 3 vacant positions, excluding the three vacant positions that were subsequently eliminated by the Department of Finance. Currently, the Dental Board has 7 vacant positions. Additionally, 3 positions are designated as filled, but the incumbents are currently on extended leaves of absence. In one case, the person has actually retired, but the position will not be designated as "vacant" until their accumulated sick leave has been exhausted. In total, 22 percent of the Dental Board's 45.3 authorized positions are not filled or the personnel are on an extended leave of absence. The Board has a total of only 35 staff to perform all of its examination, licensing, enforcement, and administrative support functions. Previously the Dental Board has had as many as about 48 filled positions. All of the Dental Board's programs have been adversely impacted by staff turnover and the inability to fill vacant positions.

The Dental Board needs relief from the statewide hiring freeze so that it can fill its vacant investigator and support staff positions. It also would help for the Board to have a fully staffed management team. The Board recently selected a new Executive Officer, and appears to have worked collaboratively with the Department of Consumer Affairs in addressing this need. However, either the Board's Interim Executive Officer (a Staff Services Manager I) needs to be reassigned to support the Enforcement Program, or authorization is needed to recruit another candidate to fill the Sacramento Office Enforcement Supervisor position. This should be a sworn supervisory position, but it may not be possible to reclassify the position to a sworn status in the current budget environment.

There is a significant risk that the progress that has been made will be quickly reversed in the absence of sufficient management, investigative, and support staff resources. It is already apparent that the pace of improvement has slowed significantly in recent months. Any further reductions in Enforcement Program staffing capabilities will make it increasingly difficult just to sustain current operations.

There are several areas where previously identified improvement needs have not yet been addressed. First, a specific proposal has not been prepared that would repeal current statutes that limit the number of peace officers that can be appointed to the Board on a permanent status basis. Also, a specific proposal has not been prepared that would repeal statutory requirements to conduct an unneeded \$75,000 follow-up study of the Board's use of peace officers. It is the Monitor's understanding that it has been agreed that both of these areas will be addressed as part of a legislative proposal that is expected to be introduced following the Board's Joint Legislative Sunset Review Committee hearing in April.

Additionally, substantial improvement is still needed in how the Board oversees and manages its budget and expenditures. The Board's recent selection of a new Executive

Officer should help to enable the Board to begin to address its needs in this mission-critical area.

Finally, the Board has not yet made it a priority to begin disseminating a consumer satisfaction survey with all complaint closing letters. Basic measures of consumer satisfaction with the Board's Enforcement Program services are critically needed, and long overdue. The Board should be required to firmly commit to a specific date to begin disseminating consumer satisfaction surveys to complainants. Also, periodic summaries of survey results should be required to be provided to the Joint Legislative Sunset Review Committee beginning September 1, 2003 (i.e., for the six-month period ending June 30, 2003). This information also should be made available to the public.

B. Organization and Staffing

The Initial Report of the Enforcement Monitor contained the following recommendations related to the organization and staffing of the Dental Board's Enforcement Program:

- ❖ Obtain exemptions from the hiring freeze to (1) convert limited-term peace officers to a permanent status, and (2) fill vacant investigator positions.
- ❖ Repeal current statutes related to limited-term peace officer appointments
- ❖ Forego any further analysis of the potential use of non-sworn investigators to replace some of the DBC's peace officers
- ❖ Forego any further analysis of contracting for peace officer services, at least for the term of the monitoring contract
- ❖ Realign Enforcement Program staff reporting relationships
- ❖ Develop a plan to complete a staffing analysis to determine the number of positions needed in key areas (e.g., complaint intake, complaint processing, investigations, inspections, etc.).

Adverse Impacts of Statewide Hiring Freeze and Budget Reductions

The Dental Board's efforts to implement some of the Monitor's recommendations have been hampered by the statewide hiring freeze that was imposed on October 23, 2001. Four of the Dental Board's 14 previously authorized peace officer positions have been vacant for the past year, representing a 29 percent vacancy rate. Recently, in response to control language included in the FY2002/03 Budget Act, the Department of Finance eliminated two of these vacant investigator positions along with a clerical support position. The Department of Finance also reduced the Dental Board's FY2002/03 budget by \$125,000 to reflect elimination of these positions. The hiring freeze, along with these permanent staffing and budget reductions, has adversely impacted the Dental Board's capability to implement some of the changes needed to improve Enforcement Program performance.

Growing Numbers of Vacant Positions

To date, the Dental Board has not received approval of its requests for exemptions from the hiring freeze to (1) convert limited-term peace officers to a permanent status, and (2) fill vacant investigator positions. Also, the Board has experienced additional attrition since the beginning of the current fiscal year. Specifically, during October the Dental Board's Assistant Executive Officer accepted an appointment to another state agency. Also, an Office Assistant who had sole responsibility for inputting newly received complaint information into the Dental Board's complaint tracking system (CAS) separated from state service. Subsequently, a Staff Services Analyst who supported the Diversion Program retired. Recently, an Associate Government Program Analyst who served as the Board's Legislative Analyst also retired. Finally, two Enforcement Program support staff recently began extended leaves of absence. One of these staff had just been reassigned the responsibility to input new cases into CAS. The second

had primary responsibility for tracking cases referred to the Attorney General's Office for disciplinary action.

Over the past eight months, available Enforcement Program staffing resources have been realigned in an effort to maintain ongoing operations. During June, Ms. Lynn Thornton, a Sacramento-based Senior Investigator, was appointed to the vacant Chief of Enforcement position. Also during June, Ms. Terri Lane, a Tustin-based Senior Investigator, was appointed to the vacant Tustin Office Enforcement Supervisor position. During October, the Sacramento Office Enforcement Supervisor, Ms. Gladys Mitchell (a Staff Services Manager I), was appointed as Interim Executive Officer. Finally, all sworn and non-sworn Enforcement Program staff assigned to the Sacramento Office now report directly to the Chief of Enforcement. Previously, all non-sworn Sacramento Office Enforcement Program staff reported to the Sacramento Office Enforcement Supervisor.

Excluding the three authorized positions that were recently eliminated, unstaffed positions at the Dental Board currently include:

- ❖ The Executive Officer position (currently filled on an interim basis by the Sacramento Office Enforcement Supervisor, pending appointment of the newly selected Executive Officer)
- ❖ The Assistant Executive Officer position
- ❖ 1 Dental Consultant position (Complaint Review)
- ❖ 2 of 8 remaining authorized Investigator positions (Complaint Investigations)
- ❖ 1 Associated Government Program Analyst position (Legal Action Case Tracking)
- ❖ 1 Associate Government Program Analyst position (Legislative Analyst)
- ❖ 1 Staff Services Analyst position (Diversion Program and Special Projects)
- ❖ 1 Office Technician position (Enforcement Program support)
- ❖ 1 Office Assistant position (Enforcement Program support).

It is anticipated that additional staff attrition will occur in the near future due to retirements, further reducing the Enforcement Program's already diminished staffing resource capabilities. Irrespective of whether a vacancy occurs in the Enforcement Program, or elsewhere in the organization, it can adversely impact Enforcement Program performance because of the relatively small number of total filled positions at the Board and associated needs to cross-share available resources to sustain operations in all program areas. Additionally, the absence of a fully staffed management team results in (1) a reallocation of some work to remaining managers, supervisors and staff, and (2) displacement or deferral of some work that remaining staff would otherwise perform.

The Dental Board has submitted requests for exemptions to fill its vacant Assistant Executive Officer, investigator, and support staff positions. Unless the hiring freeze is lifted, the Board may not be able to fill these positions without first obtaining an exemption. To date, no final action has been taken on any of the Board's exemption requests.

It is possible that the Dental Board will be able to fill some vacant positions with surplus staff from other state agencies. To the extent that current staffing levels can be maintained, the Board should be able to sustain its current operational capabilities. However, at this time it is not known whether surplus staff will be available to fill the Dental Board's specific needs. The Dental Board needs to place a high priority on identifying and recruiting surplus staff from other agencies, and should request assistance from the Department of Consumer Affairs for this purpose, if needed.

Repeal of Statutes Governing Number Peace Officer Appointments Needed

If the Dental Board obtains authority to fill its two remaining vacant peace officer positions, it would be beneficial to be able to fill the positions on a permanent, rather than a limited-term, status basis. Assuming that the Dental Board's two current limited-term peace officers are able to be converted to a permanent status basis, the Dental Board will be precluded by current statutes from filling the two vacant positions on permanent status basis. The statutes specifying how many peace officers can be appointed to the Dental Board on a permanent or limited-term status basis should be repealed.

Statutorily Mandated \$75,000 Follow-Up Study of Board's Use of Peace Officers Not Needed

A follow-up to an earlier study completed by an outside consultant was initially planned to be performed during FY2001/02, but was deferred. The Monitor's Initial Report contains an extensive discussion of the basis for recommending that there should not be any further analysis of the potential use of non-sworn investigators to replace some of the Dental Board's sworn investigators. The current statutory requirement for performance of this \$75,000 follow-up study should be repealed and the contract for the study should be cancelled.

Since the issue of the Board's use of sworn peace officers first arose during the mid-1990s, the number of authorized sworn peace officer positions has been reduced from 17 to 10 (including the Tustin Office Enforcement Supervisor and the Chief of Enforcement). Recently, the Chief of Enforcement has, out of necessity, diverted a small number of complaints to some of the Enforcement Program's non-sworn inspectors that otherwise would have been assigned to one of Program's few remaining sworn investigators. As was indicated in the Monitor's Initial Report, this bifurcated approach to assigning cases is inherently cumbersome, provides only marginal benefits, and adversely impacts the optimal utilization of management time. Finally, the Monitor does not believe that the Board currently has available the types of data that are needed to properly conduct this type of study. It is for exactly this reason that the results of the earlier study of this issue were inconclusive, and that a follow-up study was mandated.

Additional Analysis of Contracting Alternatives Not Appropriate at This Time

Further analysis of contracting for peace officer services should be deferred, at least for the term of the monitoring contract. It is our understanding that potential alternative service providers are experiencing similar workload, staffing, and budget problems as

are being experienced by the Dental Board. Furthermore, the Board's new Chief of Enforcement and Tustin Office Enforcement Supervisor, along with Enforcement Program staff, have made substantive progress in terms of addressing as many of the identified needs for improvement as can be expected given current staffing and budget constraints. Additionally, Enforcement Program staff are implementing Board-approved strategies designed to address any structural imbalances that exist between the investigative workload demands and current staffing resource capabilities.

A reasonable period of time should be provided to ascertain whether, and to what extent, these efforts are successful before considering wholesale organizational restructuring alternatives. Additionally, re-surfacing of this issue at this time would distract management and staff from their current focus on fixing the many problems that currently exist. If at some future time this issue is reconsidered, it would be better if some of these problems have already been addressed.

Any further shrinkage in the pool of staffing resources available to perform complaint handling and investigation functions at the Dental Board could make it necessary to enter into some form of collaboration or consolidation with another organization in order to sustain the provision of basic services. In terms of numbers of staff, the Dental Board's Enforcement Program is relatively small. Core operational capabilities could be significantly impacted by any additional loss of staff.

Plan for Analysis of Enforcement Program Staffing Requirements Deferred

At some point, a credible analysis of the Enforcement Program's staffing requirements should be completed to provide a basis for reclassification of existing positions (e.g., to provide greater flexibility in the use of a small pool of available resources), or for requesting new positions (e.g., for complaint handling, investigations, outreach and education, proactive enforcement, etc.). Over the past several months, the Dental Board's efforts in this area have focused on improving the quality of workload information produced by the Board's complaint tracking system, and developing and implementing an investigator timekeeping application. Both of these types of information are needed to perform an analysis of Enforcement Program staffing requirements. However, additional changes are needed to fully address current needs in both of these areas.

A need exists for the Dental Board to continue to improve its current workload and staff time reporting systems, and to develop a plan for analysis of Enforcement Program staffing requirements. However, the Board's capability to address these needs is being adversely impacted by staff turnover and the hiring freeze. Also, given the current environment, it is unclear how much utility there would be in completing an analysis of the Enforcement Program's staffing requirements since there is little likelihood that the Dental Board will be able to obtain necessary oversight agency approvals needed to implement whatever recommendations result from the study. Ultimately, an analysis of Enforcement Program staffing requirements should be completed to enable the Board to restructure its remaining pool of available resources and begin to develop needed service delivery capabilities (e.g., for outreach and education, proactive enforcement, etc.).

C. Operations Management

The Dental Board's Chief of Enforcement and Tustin Office Enforcement Supervisor, along with all Enforcement Program staff, have made substantial progress in addressing many of the **most critical** recommendations contained in the Monitor's Initial Report. **Exhibit I**, on the next page, provides a brief summary of each of the recommendations that the Dental Board has fully implemented. **Exhibit II**, following Exhibit I, provides a brief summary of several other recommendations that have been partially implemented.

As shown by Exhibits I and II, the Dental Board has fully or partially implemented eighteen of the twenty-two operations management recommendations contained in the Monitor's Initial Report, including the following:

- ❖ Developing an Enforcement Program Improvement Plan
- ❖ Developing a contingency plan to address imbalances between investigative workload demands and current staffing resource capabilities
- ❖ Conducting structured case reviews with each of the Board's investigators on a regular basis
- ❖ Designating an individual in each region to oversee and supervise probation monitoring activities
- ❖ Discontinuing the special processing of malpractice cases
- ❖ Improving complaint statistical information
- ❖ Developing policy and procedures manuals.

Primarily due to staffing constraints, the Board has deferred taking action on some of the recommendations contained in the Monitor's Initial Report. For the most part, the Monitor agrees with the prioritization and related scheduling decisions that have been made. **Exhibit III**, following Exhibit II, provides a summary of operations management recommendations that the Dental Board has not yet begun to implement.

Exhibit I

Summary of Fully Implemented Operations Management Recommendations

Enforcement Program Improvement Planning. With assistance from the Enforcement Monitor, the Chief of Enforcement prepared a two-year plan for implementing recommendations for improvement contained in the Monitor's Initial Report. The Improvement Plan is being utilized to monitor the agency's progress in implementing each of the Monitor's recommendations. The Improvement Plan has been periodically updated to reflect the Dental Board's evolving needs and circumstances.

Contingency Planning. A contingency plan was approved by the Board at its public meeting on November 8, 2002. The contingency plan is intended to help address structural imbalances that exist between investigative workload demands and current staffing resource capabilities. It has two major components. First, it provides for referral of fraud complaints to other public agencies. Second, it provides for the addition of a several more types of violations to the Board's Cite & Fine Table. The Cite & Fine Table additions will enable the Board, on a permissive basis, to utilize a citation and associated orders to resolve a complaint in lieu of a more labor intensive and costly accusation process. For example, in the case of group of abandonment complaints against a single licensee who is no longer practicing in California, the citation process could be used to recover patient records in lieu of completing a formal investigation of each individual complaint. Failure by the licensee to comply with the citation can be used as a basis for an accusation, and suspension or revocation of a license (if warranted). Board staff still need to prepare a proposal specifying the amount of the fine for each addition to the Cite & Fine Table, and submit the proposal to the Board for adoption.

Case Reviews. Standard formats have been developed for conducting and documenting completed case reviews, and supervisory responsibilities related to periodically conducting case reviews have been defined and implemented. Implementation of these changes resulted in the accelerated closure of aged cases, and a one-time reduction in investigator caseloads and backlogs.

Probation Monitoring. A new PC-based tracking system was implemented to standardize the tracking of probationers, statewide. Also, a review of all probation cases was completed. Additionally, one person in each region was designated to oversee and supervise probation monitoring activities. In Northern California, the designated individual is the Chief of Enforcement. In Southern California, the designated individual is the Tustin Office Enforcement Supervisor. Finally, the duty statement of the Sacramento-based Probation Coordinator was revised to be consistent with the types of duties actually performed.

Special Processing of Malpractice and Denti-Cal Cases. The Board's policies and procedures were changed to require obtaining malpractice case records, wherever appropriate. Malpractice and Denti-Cal cases are now handled the same way as all other complaints are handled. This includes evaluation of aged B&P 800-805 cases, and referral of malpractice cases to investigation, when appropriate.

Multiple Complaint Case Investigations. A new policy was developed and implemented governing multiple complaint case investigations, and associated referrals to the AGO. The new policy requires that investigators refer multiple complaint cases to the AGO as soon as they are sufficiently complete to support an appropriate disciplinary action, and not hold cases pending investigation of all related complaints.

Northern California Laboratory Contract. It was determined that the Northern California laboratory contract allows for collection of biological test samples from probationers in the same manner as is currently done in the Southern California region. Northern California investigators have been reminded that they can direct probationers to provide samples at a laboratory in lieu of collecting the samples themselves.

Denti-Cal Complaint Counts. The Chief of Enforcement completed this review and decided not to modify the current process. The approved process has been formally documented.

File Retention Policies. The Chief of Enforcement completed this review and determined that the Board's current file retention policies and practices should be continued. "With Merit" case files are retained for five years. "Without Merit" case files are retained for one year as a contingency should the complainant request that the complaint be re-opened. Retaining "Without Merit" cases for longer than one year, for reference in connection with subsequent complaints against the same licensee, would not be beneficial because the complaints have already been reviewed and determined to be "Without Merit".

Case Priority Coding System. The Chief of Enforcement completed this review and determined that the Board's case coding system has an imbedded simplified coding structure whereby the first digit of the two-digit code signifies the priority of the complaint, and the second digit signifies the type of violation. The assigned priority also is used when setting up associated color-coded case file jackets that are used to facilitate staff identification of high priority cases. A new case priority coding system is not needed.

Exhibit II

Summary of Partially Implemented Operations Management Recommendations

Complaint Tracking System Improvements. Under direction of the Chief of Enforcement, a number of modifications have been made to the Dental Board's complaint tracking system (CAS). Improved complaint statistical information is now available on a continuing basis. Additional system modifications and enhancements are under development. Other changes are expected to be made throughout the coming year.

Policy and Procedure Manuals. Policy and procedure manuals are needed to help improve consistency in the handling of complaints, conduct of investigations, and performance of other related enforcement activities. However, the amount of staff time needed to prepare quality policy and procedure manuals in all of the areas needed is quite large, and cannot be immediately absorbed by currently available staffing resources. Also, the Department of Consumer Affairs generally does not provide support staff to the various boards for this type of activity, and funding is not currently available to obtain the services of an outside contractor for this purpose.

Staff recently completed updating a Probation Manual, and have nearly completed updating an Inspection Manual. The Complaint Unit Manual was assigned to an analyst for updating. The Supervisor's Manual and the Investigation Manual were previously targeted for completion during the second half of FY2002/03. Due to resource constraints, it is unlikely that staff will complete development or updating of the Complaint Unit, Investigation, or Supervisor Manuals before the end of FY2002/03.

Investigator Timekeeping Application. The Dental Board has nearly completed implementation of a Microsoft Access timekeeping application for investigators. The application is currently used by the Medical Board, and Medical Board staff have provided implementation assistance to the Dental Board. The application is designed to help monitor investigator performance and provide data needed for cost recovery purposes. The application would have to be modified to enable the capture of additional data needed to conduct an analysis of investigator staffing requirements. Currently, there are no plans to make such modifications to the application.

AGO Staffing Requirement and Expenditure Projections, and Tracking and Monitoring of AGO Cases. The Chief of Enforcement and Tustin Office Enforcement Supervisor have met periodically with AGO staff to review and monitor the status of legal action cases. Additionally, the Dental Board has begun development of a new PC-based application for tracking the aging and status of legal action cases. However, the analyst assigned to this initiative recently began an extended leave of absence. The Dental Board also does not have a structured approach for estimating AGO staffing requirements and expenditures. Because the Board does not have an effective method for estimating AGO staffing requirements and expenditures, there is a risk that it will again under-utilize available funding resources or, alternatively, need to suspend the processing of some legal action cases in order to stay within budget. Currently, the Dental Board has about 114 cases pending at the AGO. Continued attention to this area is needed to assure that forward progress on all pending cases is made while concurrently assuring that there is not an end-of-year "budget surprise." Due to staff turnover and resource constraints, the Chief of Enforcement is having an increasingly difficult time attending to needs for improvement in this area.

Elapsed Time Service Objectives. For the Complaint Unit, the Chief of Enforcement has established an initial set of elapsed time objectives for each of six major steps in the process. For the investigative function, the Monitor concurs with the Chief of Enforcement's decision to defer development of elapsed time objectives until caseloads are reduced to a reasonable level for a sufficient period of time to enable accumulation of valid data that can be used to establish such objectives.

Time Required to Obtain Experts and Control of Time Used by Experts. The Chief of Enforcement has developed a multi-faceted strategy to increase the pool of experts. It is anticipated that a larger pool of experts will help to reduce the time required to obtain expert services, when needed. Additionally, to assist the experts in completing their reviews, the Chief of Enforcement had planned to complete development of a guidebook. However, due to staff turnover and resource constraints, implementation of this initiative has been deferred. Subject to the availability of funding, the Chief of Enforcement would like to provide training to the experts at some point during CY2003.

Compensation Rates for Experts. The Chief of Enforcement is planning to request that the Board adopt a modest rate increase for expert time at trials. It is anticipated that this request will be submitted to the Board at its April 2003 public meeting.

Exhibit III

**Summary of Operations Management Recommendations
That Have Not Yet Been Implemented**

Case Closing Letters. Due to resource constraints, development of alternatives for preparing case closing letters more efficiently has been deferred. Implementation of this recommendation is expected to require a substantive investment of staff time to construct templates, enhance standard paragraphs, develop samples, and provide staff training.

Staff Cross Training and Relief Staffing. Implementation of this recommendation has been deferred due to current vacancies and the hiring freeze. This issue probably should be addressed as part of the overall analysis of Enforcement Program staffing requirements discussed earlier in this report.

Imaging Needs. This assessment has been deferred until FY2003/04, subject to the availability of funding. The Dental Board may not have available the type of specialized staff capabilities needed to perform this assessment. To address this recommendation, the Dental Board may need some technical assistance services from the Medical Board, the State Records Center, or an outside service provider.

Outreach, Education, and Proactive Enforcement Activities. Implementation of this recommendation has been deferred indefinitely due to staffing resource and funding constraints. Additional staffing resources and funding would have been needed to implement this recommendation even in the absence of the staffing and budget reductions recently imposed by the Department of Finance pursuant to the FY2002/03 Budget Act.

D. Operational Performance

Statistical data for the first half of FY2002/03 clearly shows that there was a dramatic improvement in Enforcement Program performance during this 6-month period. Primarily as a result of increased numbers of complaint closures by the Board's Complaint Unit and investigators, the total number of pending complaints declined by 31 percent. As of December 31, 2002, there were 434 fewer pending complaints than there were at the beginning of the fiscal year. There were a total of 969 pending complaints at the Board as of December 31, 2002. This compares to 1,403 pending complaints as of June 30, 2002. As a result of this reduction in number of pending complaints, the amount of calendar time required to resolve or investigate complaints has begun to decrease following a temporary increase due to the closing of large numbers of older complaints.

Results of a comparative analysis of several key performance measures are presented below.

Complaints Received: From July 1 through October 31, 2002, the Dental Board received 1,441 complaints. For comparison purposes, during FY2001/02 the Dental Board received 3,178 complaints (equivalent to 1,589 complaints for a 6-month period). The comparatively lower number of complaints received during the first half of FY2002/03 has helped the Board to avoid the accumulation of additional complaint backlogs.

Complaint Unit Closures: From July 1 through December 31, 2002, the Complaint Unit closed 1,449 complaints, excluding complaints referred for either inspection or investigation. For comparison purposes, during FY2001/02 the Complaint Unit closed 2,453 complaints, excluding referrals for either inspection or investigation (equivalent to 1,227 complaints for a 6-month period). This 18 percent higher rate of complaint closures by the Complaint Unit partially reflects an increase in the use of staff overtime authorized for this purpose, and results of certain one-time backlog reduction efforts that will not recur in the future.

Complaints Referred to Dental Consultants: From July 1 through December 31, 2002, a total of 1,192 quality-of-care complaints were referred to Dental Consultants for review. This compares to 1,490 complaints referred to Dental Consultants during all of FY2001/02. From July 1 through December 31, 2002, the Dental Consultants completed 1,260 complaint reviews. This compares to 1,297 complaint reviews completed by the Dental Consultants during the full 12-month period ending June 30, 2002 (FY2001/02). The 94 percent higher rate of completed case reviews by the Dental Consultants largely reflects the Board's increased use of outside experts for this purpose during the first half of FY2002/03.

Complaints Referred for Inspection: From July 1 through December 31, 2002, the Complaint Unit referred 127 complaints for inspection. For comparison purposes, during FY2001/02 the Dental Board referred 259

complaints for inspection (equivalent to 130 complaints for a 6-month period). During the first half of FY2002/03, management also re-directed a small number of complaints to the Board's non-sworn inspectors that previously would have been assigned to the Board's investigators.

Complaints Referred for Investigation: From July 1 through December 31, 2002, the Complaint Unit referred 244 complaints for investigation. For comparison purposes, during FY2001/02 the Complaint Unit referred 556 complaints for investigation (equivalent to 278 complaints for a 6-month period). The slightly lower number of complaints referred for investigation during the first half of FY2002/03 partially reflects the impacts of management's closer scrutiny of complaints prior to referral for investigation, and the re-direction of some complaints to the Board's non-sworn inspectors.

Complaints Closed Following Investigation: From July 1 through December 31, 2002, a total of 316 complaints were closed following investigation. For comparison purposes, 462 complaints were closed following investigation during FY2001/02 (equivalent to 231 complaints for a 6-month period). The 37 percent higher rate of complaint closures following investigation during the first half of FY2002/03 primarily reflects the impacts of management's recent focus on conducting structured case reviews with the Board's investigative staff on a regular basis, and the results of certain one-time backlog reduction efforts that will not recur in the future.

Complaints Pending in the Complaint Unit: During the first half of FY2002/03, a total of 1,820 complaints were either closed by the Complaint Unit or referred for either inspection or investigation. This compares to a total of 1,441 complaints received during this same period. Consequently, the number of complaints pending in the Complaint Unit should have decreased markedly during this period. Consistent with this, the Board's Complaint Tracking System shows that, as of December 31, 2002, there were only 633 complaints pending in the Complaint Unit compared to 971 pending complaints as of June 30, 2002. During the first half of FY2002/03, the number of pending complaints in the Complaint Unit decreased by 35 percent.

Complaints Pending Investigation: During the first half of FY2002/03, 316 complaints were closed following investigation. This compares to 244 complaints that were referred for investigation. Consequently, the number of complaints pending investigation should have decreased markedly during this period. Consistent with this, the Board's Complaint Tracking System shows that, as of December 31, 2002, there were only 336 complaints pending investigation compared to 432 complaints pending investigation as of June 30, 2002. During the first half of FY2002/03, the number of pending investigations decreased by 22 percent.

Investigator Caseloads: On average, the Board's investigators currently have 42 assigned complaints. This compares to an average caseload of about 56 assigned complaints per investigator at the beginning of the fiscal year.

While still higher than a desired level of 30 to 35 complaints per investigator, current investigator caseloads are 25 percent lower than existed as of June 30, 2002.

Complaints Referred for Legal Action: From July 1 through December 31, 2002, a total of 87 complaints were referred to the AGO following investigation. For comparison purposes, 118 complaints were referred for disciplinary action during all of FY2001/02 (equivalent to 59 complaints for a 6-month period). During the first half of FY2002/03, 28 percent of the cases closed following investigation were referred for disciplinary action. This compares to a 26 percent referral rate during FY2001/02. Additionally, during the first half of FY2002/03, a total of 24 cases were referred to district attorneys for criminal action, a portion of which may have been dual referrals. In contrast, only 22 complaints were referred to district attorneys for criminal action during all of FY2001/02. This performance data shows that Dental Board Enforcement Program staff are fully maintaining the quality of their complaint investigation services, in terms of substantiating violations and referring cases for legal action.

Complaint Aging – Complaints Closed Without Investigation: On average, about 150 days (5 months) was needed by the Complaint Unit during FY2001/02 to process complaints that were closed without referral for an investigation. This measure has declined significantly. From July 1 to September 30, 2002, an average of 143 days was needed to complete the processing of these complaints. From October 1 to December 31, 2002, an average of 122 days (about 4 months) was needed to process these complaints. Given the reductions in the number of pending Complaint Unit complaints that has occurred, and assuming that current staffing levels are maintained, further reductions in the average amount of time needed to process these complaints is likely to occur during the second half of FY2002/03.

Complaint Aging – Complaints Referred to Investigation: On average, about 2½ months was needed by the Complaint Unit during FY2001/02 to process complaints that were not closed by the Complaint Unit and were, instead, referred for investigation. As a result of the referral to investigation of large numbers of backlogged complaints during the first several months of FY2002/03, there was a temporary increase in this measure of the amount of time needed to process complaints. More recently, this measure has declined and is currently averaging less than 3 months.

Complaint Aging – Complaint Investigations: On average, about 10 months was needed during FY2001/02 to investigate complaints in addition to the 2½ month average timeframe needed by the Complaint Unit to initially process complaints that were referred for an investigation. As a result of the closure of large numbers of backlogged complaints during the first several months of FY2002/03, there was a temporary increase in this measure of the amount of time needed to process these complaints. More recently, this measure has declined and is currently averaging about 10 months, plus 2½

to 3 months for initial complaint processing by the Complaint Unit. Given the shifting of backlogged complaints from the Complaint Unit to Investigation staff, current investigator caseloads, and the Board's inability to fill vacant investigator positions, it is unlikely that any significant improvement in this performance measure will occur during the remainder of FY2002/03.

E. Customer Relations

The Monitor believes that baseline performance metrics regarding the level of consumer satisfaction with the Dental Board's services are needed so that the Board and other stakeholders can assess Enforcement Program service levels and determine the impacts of the Board's performance improvement efforts. To date, the Dental Board has not implemented recommendations previously made by the Monitor pertaining to surveying customers regarding their level of satisfaction with the Dental Board's Enforcement Program services.

The Chief of Enforcement has implemented a new procedure for accumulating information in a central repository about complaints that are received about Enforcement Program services. The repository will be able to be used to develop statistical information about these complaints.

Customer Satisfaction Surveys Have Not Been Distributed

Due to staff turnover and resource constraints, the Dental Board has not begun to disseminate a customer satisfaction survey in conjunction with case closing letters. Initially, the Monitor had recommended that customer satisfaction surveys be disseminated for all cases closed during FY2001/02 in order to develop a set of baseline performance metrics. Additionally, it was recommended that the surveys be disseminated on a continuous bases with all case closing letters beginning during July 2002. Subsequently, the Dental Board committed to begin disseminating customer satisfaction surveys in conjunction with case closing letters by not later than January 2003. To date this commitment has not been fulfilled.

New Procedure Implemented To Retain Documentation of Complaints Regarding Enforcement Program Services

Currently, the Dental Board is required by law to track certain types of complaints involving peace officers. A new procedure recently implemented by the Chief of Enforcement requires retention of documentation pertaining to other types of complaints that are received regarding Enforcement Program services. However, no complaints have been received since the new procedure was implemented.

F. Financial Management

The Initial Report of the Enforcement Monitor recommended that the Dental Board strengthen oversight and control of its fiscal management information systems. Substantial improvement is needed in this area, particularly in connection with management of the Board's legal action-related expenditures.

Initial and Updated FY2002/03 Expenditure Projections

With the assistance of the Department of Consumer Affairs' Budget Office and the Enforcement Monitor, Dental Board staff prepared an initial projection of expenditures for FY2002/03. Historically, such projections have not been prepared until much later during the year. The earlier projection was intended to be helpful for purposes of supporting analysis and decision-making by management and the Board as to the Board's programmatic and funding priorities for the year.

Prior to preparation of the initial projection, there were discussions about increasing the number of examinations that would be given during FY2002/03. Additionally, the Board was planning on absorbing costs for an Occupational Analysis. The Occupational Analysis was separately funded through a \$175,000 Budget Change Proposal (BCP) last year, but a contract was never awarded and the supplemental prior year funding could not be carried forward to the current fiscal year. The initial projection assumed that there would be no change in the number of examinations given and that the Occupational Analysis would be deferred. The initial projection included some additional funding that was allocated for various Enforcement Program needs. The initial projection showed neither a surplus nor a deficit.

Subsequently, Board staff revised the initial projection to reflect a significant reduction in the number of examinations that would be given during FY2002/03, thereby reducing the costs for examinations and producing a projected surplus. At the Board's November 8, 2002, meeting, a document was distributed showing a projected \$155,000 surplus for FY2002/03. In comments to the Board, staff indicated that these surplus funds might be utilized later during the year for the Occupational Analysis. Underlying assumptions related to the projected costs for examinations were not disclosed during this presentation. Also, no other unfunded needs or alternative uses of projected surplus funds were presented or discussed.

During late January 2003, the Monitor requested an updated projection of FY2002/03 expenditures. The expenditure projection provided by Board staff was not up-to-date. In contrast to the expenditure projection prepared just a few months earlier, the more recent projection showed only a small surplus. Also, the more recent projection did not include any funding for completing an Occupational Analysis. Back-up documentation supporting projected salary and wage expenditures was requested, but never provided. Also, the Board still has not developed a structured methodology for determining the amount of expenditures projected for AGO and OAL services, and there is no back-up documentation supporting staff's expenditure projections in this area. Instead, it is *assumed* that these costs will be about the same as incurred the prior year, which has rarely been the case.

Some Budgeted Enforcement Program Funding is Being Utilized for Other Programs

The Dental Board's most recent FY2002/03 expenditure projections provide additional funding for (1) investigators to work aged cases on a paid overtime basis, (2) outside experts to provide additional assistance reviewing complaints, (3) Enforcement Monitor services, and (4) needed replacements for Enforcement Program equipment such as weapons, tape recorders, and personal computers. No funding is allocated for:

- ❖ Replacement of Enforcement Program vehicles
- ❖ Filling vacant Enforcement Program positions, although this may not be an issue due to the hiring freeze
- ❖ Obtaining outside assistance where needed to address the recommendations contained in the Monitor's Initial Report (e.g., development of updated procedures manuals, developing a Guide for Experts, etc.).

Some of the funding included in the Dental Board's budget for Enforcement Program staffing, legal action processing, and other costs is being utilized to support the Board's Licensing and Examination Programs. The practice of utilizing Enforcement Program funding to support the Licensing and Examination Programs, if it continues, could have adverse impacts on Enforcement Program performance. It is not apparent that these trade-offs are being fully taken into consideration by the Board in its current funding allocation processes.

It is anticipated that updated expenditure projections will continue to be prepared periodically as additional information pertaining to actual year-to-date expenditure data is reported. As a part of the updating process, Dental Board management and the governing Board will have an opportunity to more carefully consider the needs of all of the Dental Board's programs, and determine which of these needs can be addressed within the current year budget, and which should be deferred to subsequent years.

The Monitor previously recommended that the Dental Board consider asking the Department of Consumer Affairs for additional assistance in this area. The Monitor strongly encourages the Dental Board and the Board's recently selected Executive Officer to pay careful attention to this area so that the types of expenditure planning and control problems experienced in prior years are not repeated during FY2002/03. Additionally, Dental Board staff should be required to provide more complete information and reporting to the Board regarding all of the key assumptions underlying its expenditure projections, and alternative uses for available surplus funds, if any.

G. Other Recommendations

Other recommendations contained in the Monitor's Initial Report addressed a range of areas, including:

- ❖ Complaint disclosure
- ❖ Staff performance appraisals
- ❖ The Drug Diversion Program
- ❖ The Board's limited capabilities to enforce reimbursements in situations involving substandard treatment in single incident negligence cases
- ❖ Alleged bias in the Board's disciplinary decisions.

A brief summary of each of these recommendations and the status of the Board's implementation efforts is provided below:

Analysis of disclosure policies and issues, and documentation of governing laws, policies, and procedures. Implementation of this recommendation would involve conducting a thorough analysis of the Dental Board's complaint disclosure policies and issues, and documenting applicable laws, policies, and procedures. Due to staff turnover and resource constraints, the Board has deferred implementation of this recommendation pending appointment of a new Executive Officer.

Staff performance appraisals. Due to staff turnover and resource constraints, and because the Chief of Enforcement and Tustin Office of Enforcement Supervisor were only recently appointed to their positions, implementation of this recommendation to complete performance appraisals for all Enforcement Program staff has been deferred at least until late-2003.

Diversion Program. Copies of laboratory tests are now provided to the Chief of Enforcement on those participants in the Diversion Program who also are on probation, thereby reducing needs to separately test for both programs. Dental Board management has begun discussions with the Diversion Program contractor regarding staff access to information regarding self-referred participants. Further discussions are needed to resolve outstanding issues in this area. Due to staff turnover and resource constraints, completion of an assessment of needs for alternative drug diversion programs has been deferred pending appointment of a new Executive Officer.

Board capabilities to enforce reimbursements. At its November 8, 2002, public meeting, the Board authorized its Legislative Committee Chair (Mr. Michael Pinkerton) to develop and coordinate the introduction of proposed legislation during early-2003 that would enhance the Board's ability to enforce reimbursements for substandard treatment in single incident negligence cases. Board staff need to identify and assess alternative approaches that could be used, but have been unable to do so due to staff turnover and resource constraints. As a result, completion of this analysis has been deferred until late-2003. If completed, proposed legislation would be introduced in 2004.

Review of the Board's disciplinary actions. The Monitor reviewed all recommended disciplinary actions against licensees that were not adopted by the Board during the past three fiscal years. During this period, only nine proposed disciplinary decisions were not adopted by the Board. This compares to 10 to 15 proposed disciplinary actions adopted by the Board each year, excluding decisions pertaining to petitions for reinstatement of inactive or revoked licenses, and decisions pertaining to petitions for termination of probation. Additionally, each year, 20 to 40 proposed stipulated agreements are adopted by the Board.

Most of the non-adopted decision cases involved long-term drug or alcohol abuse, sexual misconduct with multiple patients, multiple instances of gross negligence involving oral surgery or sedation, or other similarly egregious violations of the law. Results of the review do not support allegations that the Board has arbitrarily favored or penalized any particular group of licensees. However, it was noted that the Disciplinary Guidelines used to help assure the imposition of consistent remedies and sanctions in connection with disciplinary actions adopted by the Board were last updated in 1996. This is another area where additional resources are needed by the Dental Board to enable further improvement of the Enforcement Program.